

## FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

## VIA ELECTRONIC AND FIRST CLASS MAIL

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MAY 3 0 2019

**RE:** MUR 7598

Democratic Party of South Carolina and Velva E. George in her official

capacity as treasurer (Formerly RR 17L-46)

Dear Mr. Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting your clients, Democratic Party of South Carolina and Velva E. George in her official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On November 30, 2017, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On April 25, 2019, found reason to believe that the Committee violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b). The Factual and Legal Analysis approved by the Commission on May 22, 2019, which formed a basis for the Commission's finding, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation

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to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Preprobable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. Enclosed is a conciliation agreement for your consideration

If your clients are interested in engaging in pre-probable cause conciliation, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650 or rluckett@fec.gov, within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/respondent.guide.pdf.

The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,

Ellen L. Weintrand

Ellen L. Weintraub

Chair

Enclosures
Procedures
Factual and Legal Analysis

1 2	FEDERAL ELECTION COMMISSION						
3	FACTUAL AND LEGAL ANALYSIS						
4 5 6 7	RESPONDENTS:	Democratic Party of South Carolina and Velva E. George in her official capacity as treasurer	MUR 7598				
8 9	i. introduction	ON	, i				
10	This matter was generated based on information ascertained by the Federal Election						
11	Commission ("Commission") in the normal course of carrying out its supervisory						
12	responsibilities. The Reports Analysis Division ("RAD") referred the Democratic Party of						
13	South Carolina and Velva E. George in her official capacity as treasurer (the "Committee") to the						
14	Office of General Counsel for failing to disclose an aggregate total of \$2,110,627.71 in receipts						
15	and disbursements on its 2016 August Monthly and 12-Day Pre-General Reports. <sup>2</sup> For the						
16	reasons set forth below, the Commission finds reason to believe that the Committee violated						
17	52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b).						
18	II. FACTUAL AN	D LEGAL ANALYSIS					
19	A. BACKGROU	<u>IND</u>					
20	The Committee	s a state party committee of the Democratic Party. <sup>3</sup>	On June 1 and				
21	June 12, 2017, the Com	mittee amended its 2016 August Monthly and 12-D	ay Pre-General Reports,				
22	respectively, disclosing	additional receipts and disbursements, as shown in	the chart below.4				

See 52 U.S.C. § 30109(a)(2).

<sup>&</sup>lt;sup>2</sup> RAD Referral (Democratic Party of South Carolina) (Nov. 28, 2017) ("Referral"), incorporated herein by reference.

See Amended Statement of Organization, Democratic Party of South Carolina (Oct. 26, 2017).

<sup>&</sup>lt;sup>4</sup> Referral at 2-3, Attach. 2.

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Report		Report Line	Total Amount Reported on Original Report	Total Amount Reported on Amended Report	Total Increased . Variance
	Receipts	Line 11(a)(i): Itemized Contributions from Individuals	\$50,183.01	\$50,279.01	\$96.00
		Line 11(a)(ii): Unitemized Contributions from Individuals	\$4,944.16	\$2,020.16	-\$2,924.00
		Line 12: Transfers from Affiliated/Other Party Committees	\$7,500.00	\$460,045.00	\$452,545.00
thly		Line 15: Offsets to Operating Expenditures	\$0.00	\$4,325.19	\$4,325.19
2016 August Monthly	Dishursements	Line 21(a)(i): Allocated Federal/Non-Federal Activity (Federal Share)	\$57,886.12	\$56,555.47	-\$1,330.65
2016 Au		Line 21(a)(ii): Allocated Federal/Non-Federal Activity (Non-Federal Share)	\$102,908.31	\$100,542.76	-\$2,365.55
		Line 21(b): Other Federal Operating Expenditures	\$6,353.94	\$6,594.55	\$240.61
		Line 22: Transfers to Affiliated/Other Party Committees	\$0.00	\$450,000.00	\$450,000.00
		Linc 30(b): Federal Election Activity Paid Entirely with Federal Funds	\$8,539.23	\$16,799.45	\$8,260.22
				Total Variance:	\$908,846.82
		Line 11(a)(i): Itemized Contributions from Individuals	\$6,733.16	\$7,128.16	\$395.00
	Receipts	Line 11(a)(ii): Unitemized Contributions from Individuals	\$6,384.00	\$5,682.02	-\$701.98
		Line 12: Transfers from Affiliated/Other Party Committees	\$68,268.09	\$668,268.09	 \$600,000.00
neral		Line 15: Offsets to Operating Expenditures	\$0.00	\$1,004.35	\$1,004.35
ay Pre-General		Line 21(a)(i): Allocated Federal/Non-Federal Activity (Federal Share)	\$22,280.68	\$17,867.84	-\$4,412.84
2016 12-Day		Line 21(a)(ii): Allocated Federal/Non-Federal Activity (Non-Federal Share)	\$39,985.13	\$31,765.08	-\$8,220.05
201	Disbursements	Line 21(b): Other Federal Operating Expenditures	\$6,195.21	\$5,000.00	-\$1,195.21
		Line 22: Transfers to Affiliated/Other Party Committees	\$2,500.00	\$602,500.00	\$600,000.00
		Line 30(h): Federal Election Activity Paid Entirely with Federal Funds	\$26,990.11	\$41,901.73	\$14,911.62
				Total Variance:	\$1,201,780.89

On July 12, 2017, and August 10, 2017, RAD sent the Committee Requests for

- 2 Additional Information ("RFAIs") seeking clarification regarding the substantial increase in
- 3 receipts and disbursements disclosed on the amended 2016 August Monthly and 12-Day Pre-
- 4 General Reports. In response, on August 16, 2017, the Committee filed a Form 99
- 5 (Miscellaneous Report) addressing both RFAIs, stating that transfers from the Hillary Victory
- 6 Fund ("HVF") and transfers to the Democratic National Committee ("DNC") were inadvertently
- 7 omitted from the original filings, and the Committee amended its reports soon after discovery of
- 8 the omissions.<sup>6</sup>

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## B. <u>LEGAL ANALYSIS</u>

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee

- 11 treasurers to file reports of receipts and disbursements in accordance with the provisions of
- 12 52 U.S.C. § 30104.<sup>7</sup> These reports must include, *inter alia*, the total amount of receipts and
- disbursements, including the appropriate itemizations, where required. Here the Committee did
- 14 not comply with the Act's reporting requirements when it failed to disclose a total of
- 15 \$2,110,627.71 in increased activity.
- In its Response to the Referral, the Committee acknowledges its reporting errors but
- 17 argues for leniency, noting that its failure to report the activity at issue was unintentional and due
- 18 to "an inadvertent oversight caused by the large and unprecedented financial activity undertaken

<sup>5</sup> Referral at 3.

i *Id*.

<sup>&</sup>lt;sup>7</sup> 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

<sup>&</sup>lt;sup>8</sup> See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

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by the [Committee] in 2016." The Committee states that almost all of the amounts included in

2 its amendments involve the omission of two transfers from HVF totaling \$1,050,000 and two

3 transfers totaling the same amount to the DNC that were not detected because the errors caused

4 no net change to the Committee's cash-on-hand balance. 10 The Committee also states that when

it discovered the errors during a Spring 2017 review of the Committee's 2016 joint fundraising

activity, it amended its disclosure reports, and HVF and the DNC each timely disclosed the

respective transactions to the Commission.<sup>11</sup>

The Committee argues that the public was not deprived of meaningful disclosure. In the context of joint fundraising, however, other participating committees disclosing the types of transactions at issue here does not vitiate the violation. As the Commission's regulations specify, both the joint fundraising representative and the participating political committees are required to report all receipts and disbursements in the reporting period in which they are received and made. Thus, the Committee cannot avoid that responsibility by pointing out that certain transactions were disclosed by other entities, or that it encountered a substantial uptick in financial activity. The Committee was responsible for ensuring that its reports were complete and accurate. Although the Committee requests that the Commission assign this matter to ADRO, this matter was appropriately referred to OGC. Accordingly, the Commission finds

Democratic Party of South Carolina Resp. ("Resp.") at 1-2 (Dec. 15, 2017).

<sup>10</sup> *Id*.

<sup>11</sup> Id. at 2.

See 11 C.F.R. § 102.17(c)(8)(i), (ii); see also Explanation & Justification, Transfer of Funds, Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,300 (June 7, 1983).

In addition, each relevant transfer occurred well before the applicable filing deadline: the 2016 August Monthly Report was filed on August 20, 2016, while the relevant transfers occurred on July 26, and the 12-Day Pre-General Report was filed on October 28, while the relevant transfers occurred on October 11. See Resp. at 2.

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- 1 reason to believe that the Democratic Party of South Carolina and Velva E. George in her official
- 2 capacity as treasurer violated 52 U.S.C. § 30104(a) and (b) and 11 C.F.R. § 104.3(a) and (b).